

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE CLEMENTE BRAVO,

Defendant and Appellant.

B301560

(Los Angeles County
Super. Ct. No. BA331885)

APPEAL from an order of the Superior Court of Los Angeles County, Kathleen Kennedy, Judge. Affirmed.

Larry Pizarro, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

George Clemente Bravo appeals from a postconviction order denying his petition for resentencing under Penal Code section 1170.95¹ with respect to his prior convictions of conspiracy to commit murder. Because section 1170.95 does not provide relief for individuals convicted of conspiracy to commit murder, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In the course of another investigation, the Los Angeles County Sheriff's Department discovered evidence of a criminal conspiracy to murder Rafael Gonzalez and Ralph Roacho in retaliation for a kidnapping they were believed to have committed. A jury convicted Bravo of two counts of conspiracy to commit murder. (§ 182, subd. (a)(1).) The jury also found true the crimes were committed for the benefit of, at the direction of, or in association with a criminal street gang. (§ 186.22, subd. (b)(1).) The trial court sentenced Bravo to 50 years to life in state prison, with a minimum term before parole of 15 years. Bravo appealed, and we affirmed. (*People v. Bravo* (Oct. 8, 2014, B247952) [nonpub. opn.].)

On April 13, 2019 Bravo, representing himself, filed a petition for relief and supporting declaration stating he had met the requirements under section 1170.95 for relief under Senate Bill No. 1437 (2017-2018 Reg. Sess.) (Senate Bill 1437), including that (1) the information allowed the prosecution to proceed under a theory of felony murder or the natural and probable consequences doctrine; (2) he was convicted of murder based on a theory of felony murder or the natural and probable consequences

¹ All statutory references are to the Penal Code.

doctrine; and (3) Bravo could not be convicted of first or second degree murder under changes to sections 188 and 189, effective January 1, 2019. Bravo requested the court appoint him counsel and grant him a new sentencing hearing.

On May 7, 2019, without appointing Bravo counsel, the superior court summarily denied Bravo's petition for resentencing because he was not convicted of murder. Bravo timely appealed.²

DISCUSSION

We appointed counsel to represent Bravo on appeal. After examination of the record, counsel filed an opening brief raising no issues. On January 10, 2019 we advised Bravo that he had 30 days within which to submit any contentions or issues he wished us to consider. We have received no response.

On September 30, 2018 Senate Bill No. 1437 (2017-2018 Reg. Sess.) was signed into law, effective January 1, 2019. Senate Bill 1437 was enacted to "amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to

² The deadline for filing an appeal was July 6, 2019. (Cal. Rules of Court, rule 8.104.) The superior court received and filed Bravo's notice of appeal on July 9, 2019. However, we consider the notice of appeal timely filed based on the "prison-delivery rule," which provides that a self-represented prisoner's notice of appeal in a criminal case is deemed timely filed if, within the relevant period, the prisoner properly submitted the notice to prison authorities for forwarding to the clerk of the superior court pursuant to the procedures established for prisoner mail. (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 110.) Here, Bravo's proof of service by mail shows that on June 6, 2019 (1) he placed the notice of appeal in a sealed envelope, with fully prepaid postage; (2) he addressed the envelope to the Los Angeles County Superior Court; (3) and he deposited the envelope for mailing into a deposit box provided by the Kern County State Prison. In addition, the envelope for the notice of appeal shows a postmark dated June 21, 2019.

kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Sen. Bill 1437 (2017-2018 Reg. Sess.) § 1; see *People v. Verdugo* (2020) 44 Cal.App.5th 320, 325 (*Verdugo*), review granted Mar. 18, 2020, S260493; *People v. Martinez* (2019) 31 Cal.App.5th 719, 723 (*Martinez*).)

New section 188, subdivision (a)(3), provides, “Except as stated in subdivision (e) of Section 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime.” Senate Bill 1437 also added section 189, subdivision (e), which provides, “A participant in the perpetration or attempted perpetration of a felony listed in subdivision (a) in which a death occurs is liable for murder only if one of the following is proven: [¶] (1) The person was the actual killer. [¶] (2) The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree. [¶] (3) The person was a major participant in the underlying felony and acted with reckless indifference to human life, as described in subdivision (d) of Section 190.2.”

Senate Bill 1437 also provides a procedure in new section 1170.95 for an individual convicted of felony murder or murder under a natural and probable consequences theory to petition the sentencing court to vacate the conviction and be resentenced on any remaining counts if he or she could not have been convicted of murder under Senate Bill 1437’s changes to sections 188 and 189. (Sen. Bill 1437 (2017-2018 Reg. Sess.) § 4.) Section 1170.95, subdivision (b)(1), provides that the petition “shall be filed with

the court that sentenced the petitioner.”³ The petition must include a declaration by the petitioner stating he or she is eligible for relief under the section, providing the superior court case number and year of the conviction, and indicating whether he or she requests the appointment of counsel. (§ 1170.95, subd. (b)(1).)

The Legislature intended for there to be a three-step evaluation of a section 1170.95 petition. (*Verdugo, supra*, 44 Cal.App.5th at pp. 328, 332-333.) As we explained in *Verdugo*, “If any of the required information is missing and cannot be readily ascertained by the court, ‘the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.’ (§ 1170.95, subd. (b)(2).) [¶] If the petition contains all required information, section 1170.95, subdivision (c), prescribes a two-step process for the court to determine if an order to show cause should issue: ‘The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response . . . and the petitioner may file and serve a reply If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.’” (*Verdugo*, at p. 327.)

After issuing an order to show cause, the trial court must hold a hearing “to determine whether to vacate the murder conviction and to recall the sentence and resentence the

³ Judge Kathleen Kennedy, who reviewed and denied this petition, was the sentencing judge. (*People v. Bravo, supra*, B247952.)

petitioner on any remaining counts” (§ 1170.95, subd. (d)(1).) If a hearing is held, “[t]he prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.” (§ 1170.95, subd. (d)(3); see *People v. Lewis* (2020) 43 Cal.App.5th 1128, review granted Mar. 18, 2020, S260598.)⁴ The prosecution has the burden of proving beyond a reasonable doubt that the petitioner is ineligible for resentencing. (§ 1170.95, subd. (d)(3).)

Here, the jury found Bravo guilty of two counts of conspiracy to commit murder. (§ 182, subd. (a)(1).) But section 1170.95, subdivision (a), provides a remedy only for “[a] person convicted of felony murder or murder.” Thus, by its plain terms, Bravo is not eligible for relief under section 1170.95, and the trial court properly denied the petition on this basis. (See *People v. Larios* (2019) 42 Cal.App.5th 956, 970 [“the relief provided in section 1170.95 is limited to certain murder convictions and excludes all other convictions, including a conviction for attempted murder”]; *People v. Lopez* (2019) 38 Cal.App.5th 1087, 1103-1105, review granted Nov. 13, 2019, S258175 [Senate Bill 1437 limits relief to individuals convicted of murder].)

We have examined the entire record and are satisfied Bravo’s appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Kelly* (2006)

⁴ The Supreme Court in *People v. Lewis* limited briefing and argument to the following issues: “(1) May superior courts consider the record of conviction in determining whether a defendant has made a prima facie showing of eligibility for relief under Penal Code section 1170.95? (2) When does the right to appointed counsel arise under Penal Code section 1170.95, subdivision (c)[?]” (Supreme Ct. Minutes, Mar. 18, 2020, p. 364; *People v. Lewis*, *supra*, 43 Cal.App.5th 1128, review granted Mar. 18, 2020, S260598.)

40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The order denying Bravo's petition for resentencing is affirmed.

FEUER, J.

We concur:

PERLUSS, P. J.

SEGAL, J.